



**The Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal number: IA/33657/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On October 12, 2015**

**Decision and Reasons
Promulgated
On October 13, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR DHARAMSEELAN MOONSAMY RANGAYAH
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant

In person

Respondent

Mr Harrison (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The appellant is a national of South Africa. The background to this case is he made an application on June 18, 2014 for an EEA permanent residence card as confirmation of his right to reside in the United Kingdom pursuant to the Immigration (EEA) Regulations 2006. The respondent refused his application on August 12, 2014 because she was not satisfied he satisfied Regulation 15(1)(b) of the 2006 Regulations.

2. The appellant appealed this refusal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 and Regulation 26 of the 2006 Regulations. The matter came before Judge of the First-tier Tribunal Pickup on November 15, 2014 as a paper case and in a decision promulgated on November 17, 2014 he dismissed the appellant's appeal.
3. The appellant applied for permission to appeal on March 9, 2015 submitting the Tribunal had erred. Permission to appeal was granted by Judge of the First-tier Tribunal Page on April 23, 2015 on the basis that it was arguable the Tribunal had failed to make clear findings.
4. The respondent submitted a Rule 24 response dated May 8, 2015 but I attach no weight to this document as the author of the letter had not seen the Tribunal's decision.
5. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I see no reason to make an order now.

ERROR OF LAW SUBMISSIONS

6. The appellant, who appeared in person, submitted the Tribunal had made two errors regarding firstly, the EEA national's country of origin and secondly, had confused his wife and daughter in paragraph [16] of its decision. Moreover, the appellant submitted the Tribunal's approach to the EEA national's employment fell into error because evidence that demonstrated she had worked continuously had been submitted.
7. The appellant stated that his current application followed on from an earlier application and in his current application he had addressed the issues raised in the first refusal letter. Whilst he accepted his ex-wife had not worked all of the time he maintained there was plenty of evidence to support his claim she had worked sufficiently to meet the requirements of a "worker".
8. Mr Harrison opposed the application. He noted the Tribunal dealt with this appeal on the papers and had acknowledged:
 - a. The appellant had submitted additional documents that had not been included with his first application and that these documents included a schedule he had prepared detailing the nature of the EEA national's business and details of the website to show proof of advertising.
 - b. The nature of the EEA national's business meant she was reliant on client demand and could not show a constant cash flow.

Mr Harrison submitted the Tribunal had set out other relevant information about the appellant and at paragraphs [16] to [17] it considered the evidence and rejected it. These findings were open to the Tribunal and the appellant's submissions amounted to nothing more than a mere disagreement.

9. I reserved my decision on both issues.

DISCUSSION

10. Permission to appeal was given in this matter because Judge of the First-tier Tribunal Page was of the opinion that clearer findings on the evidence would have informed the appellant exactly why he had lost his appeal.
11. I indicated to Harrison and the appellant that in order to assess whether there had been an error in law it would be necessary for me to review the evidence that had been submitted.
12. The appellant raised possible errors in the recording of evidence contained in paragraph [16] of the decision. Mr Harrison accepted that the Tribunal had incorrectly referred to the EEA sponsor as being a Latvian national whereas, of course, she was from Lithuania and had mistakenly referred to his daughter as his ex-wife. I pointed out to the appellant that whilst these were errors they were not material to the matter in hand and consequently could not amount to an error in law.
13. The appellant had not requested an oral hearing before the First-tier Tribunal and has asked for his appeal to be dealt with on the papers. It is clear from the Tribunal's decision that Judge of the First-tier Tribunal Pickup was aware of the background including the reasons why the application had been refused in the first place. The Tribunal had regard to invoices and bank statements as well as a schedule that had been prepared by the appellant. The Tribunal's role is to assess that evidence having regard not only to the evidence submitted but also the respondent's response contained in the refusal letter.
14. At paragraph [15] of its decision the Tribunal noted the appellant's current personal situation and at paragraph [16] the Tribunal went on to consider the documents. The handwritten receipts, whilst covering odd dates over several years, did not demonstrate the EEA national was exercising treaty rights as a self-employed fashion designer and artist continuously for five years.
15. The Tribunal was entitled to assess the quality of that evidence and apply the principles set out in Tanveer Ahmed * [2002] UKAIT 00439 and the finding made in paragraph [16] about those receipts was clearly open to the Tribunal. This was not a decision where the Tribunal had failed to consider the evidence but the challenge is that the Tribunal reached a perverse decision.
16. All the findings made by the Tribunal were clearly open to it and it cannot be said that these findings were perverse. The Tribunal considered all of the documentary evidence and whilst accepting there were times when she was employed, the Tribunal ultimately concluded that she had failed to demonstrate a continuous period of five-years employment which is

what the appellant had to demonstrate to obtain permanent residence under Regulation 15 of the 2006 Regulations.

17. Accordingly, I am satisfied that the reasons given by the Tribunal were open to it. There may well be other avenues open to this appellant as he disclosed at the hearing the level of financial support and involvement he now had with his children coupled with the fact that he and the EEA national were now divorced. These avenues may give the appellant some hope of succeeding with a future application but that is a matter for a different day.

DECISION

18. There was no material error. I uphold the original decision and dismiss this appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT
FEE AWARD**

I make no fee award as the appeal has been dismissed.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis